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FORECLOSURE ORDINARY COURSE OF BUSINESS COUNSEL

8 UNITED STATES BANKRUPTCY COURT
9 DISTRICT OF NEVADA

10 IN RE

11 USA COMMERCIAL MORTGAGE COMPANY,
12 USA CAPITAL REALTY ADVISORS, LLC,
13 USA CAPITAL DIVERSIFIED TRUST DEED
14 FUND, LLC,
15 USA CAPITAL FIRST TRUST DEED FUND, LLC,
16 USA SECURITIES, LLC,

17 Debtor.

CASE NO. BK-S-06-10725 LBR
CASE NO. BK-S-06-10726 LBR
CASE NO. BK-S-06-10727 LBR
CASE NO. BK-S-06-10728 LBR
CASE NO. BK-S-06-10729 LBR

JOINTLY ADMINISTERED

CHAPTER 11 CASES

JUDGE LINDA B. RIEGLE PRESIDING

**DECLARATION OF BRIAN R. FORBES IN
SUPPORT OF APPLICATION PURSUANT TO
FED. R. BANKR. P. 2014(A) AUTHORIZING
THE EMPLOYMENT AND RETENTION OF
KIRKPATRICK & LOCKHART NICHOLSON
GRAHAM LLP AS ORDINARY COURSE OF
BUSINESS COUNSEL**

DATE: N/A

TIME: N/A

AFFECTS: ALL DEBTORS

22 I, Brian R. Forbes, hereby declare under penalty of perjury that:

23 1. I am a member of the law firm of Kirkpatrick & Lockhart Nicholson Graham LLP ("KLNG")
24 with offices located at and 2828 N. Harwood, Suite 1800, Dallas, Texas 75201.

25 2. This declaration is submitted in connection with the Order Granting Debtors' Motion for an
26 Order Authorizing Retention of Professionals Utilized by Debtors in the Ordinary Course of Business (the
27 "Ordinary Course Order") entered on October 23, 2006. The Ordinary Course Order authorizes USA
28 Commercial Mortgage Company, USA Capital Realty Advisors, LLC, USA Capital Diversified Trust Deed

1 Fund, LLC, USA Capital First Trust Deed Fund, LLC, USA Securities, LLC, debtors and debtors-in-
2 possession herein (each a "Debtor" and collectively, the "Debtors"), to retain certain professionals in the
3 ordinary course of business during the pendency of the Debtors' chapter 11 cases. The Debtors have
4 requested, and KLNG has agreed, to represent and advise the Debtors on foreclosure matters pursuant to
5 section 327 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq. (the "Bankruptcy Code").

6 3. KLNG uses a comprehensive computer software system to track client representations and
7 engagements firm-wide. I caused a "conflicts check" to be run with respect to: (a) the 20 largest unsecured
8 creditors of each of the Debtors (b) the top 20 investors of each of the Debtors; and (c) the professionals
9 retained by the Debtors and Official Committees.

10 4. Based upon my review of the conflicts check report, and to the best of my knowledge, KLNG
11 and all of its members and associates, are disinterested persons as that term is defined in 11 U.S.C. § 101(14).
12 To the best of my knowledge, except as disclosed herein, neither KLNG nor any of its members or associates
13 of KLNG have any connections with the United States Trustee, the Debtors, their investors, any other party-in-
14 interest, their respective attorneys and accountants, or to these bankruptcy estates, and have no connections to
15 the bankruptcy judge presiding over this case, the United States Trustee in this district, or any person
16 employed in the Office of the United States Trustee. To the best of my knowledge, except as disclosed herein,
17 neither KLNG nor its members or associates represent or hold any interest adverse to the Debtors or their
18 bankruptcy estates in connection with the matters for which KLNG is to be retained.

19 5. KLNG will advise and counsel the Debtors specifically concerning foreclosures for the loans
20 serviced by the Debtors. KLNG is well-versed in foreclosure proceedings and is willing to accept
21 compensation pursuant to Ordinary Course Order.

22 6. To the best of my knowledge, neither KLNG, nor any attorney employed by KLNG, is or was:

- 23 A. a creditor, equity security holder, investor, or insider of the Debtors;
24 B. an investment banker for any outstanding security of the Debtors;
25 C. an attorney for an investment banker for any outstanding security of the
26 Debtors; or
27 D. a director, officer, or employee of the Debtors or of any investment banker.
28

1 7. As part of its diverse nationwide practice, KLNG appears in cases, proceedings, and
2 transactions involving many different professionals, including attorneys, accountants, financial
3 consultants, and investment bankers, some of which may be or represent claimants and parties-in-
4 interest in the Debtors' cases. Based on my current knowledge of the professionals involved, and
5 except as is disclosed herein, KLNG does not represent or have a relationship with any attorneys,
6 accountants, financial consultants, or investment bankers which would be adverse to the Debtors or
7 their estates, except that KLNG may in the past have acted, or may presently be acting, as counsel,
8 co-counsel or as local counsel with some of those attorneys, accountants, financial consultants or
9 investment bankers on matters wholly unrelated to these cases.
10

11 8. Notwithstanding the foregoing, KLNG employs approximately 1,000 attorneys, and
12 by virtue of its size and expertise in numerous fields, may have represented, or still represent,
13 unknown entities that might be creditors or parties-in-interest in these bankruptcy cases. However,
14 any such representations are wholly unrelated to the matters for which KLNG seeks to be retained by
15 the Debtors. Consequently, I do not believe that any actual (or even potential) conflict of interest
16 exists with respect to those matters for which KLNG seeks to be retained.
17

18 9. Similarly, KLNG has a large and diverse legal practice which encompasses
19 representation of many financial institutions, commercial corporations, and creditors. Some of these
20 entities (or affiliates of these entities) are or may be holders of claims against, and/or interests in the
21 Debtors, or are or may be parties-in-interest in these cases. In the ordinary course of the practice of
22 law, KLNG and certain of its members, counsel and associates may have represented, may currently
23 represent, or may from time-to-time in the future represent such entities or affiliates of such entities
24 in matters unrelated to the Debtors' cases.
25

26 10. Notwithstanding the foregoing, KLNG has previously represented or still represents
27 several creditors of the Debtors, and/or other parties-in-interest in these cases, in matters entirely
28 unrelated to these bankruptcy cases. A list of all such entities is set forth on Exhibit 1 hereto. To the

1 best of my knowledge, none of these representations are in any way related to the Debtors or their
2 bankruptcy cases. Thus, none of these representations constitute a conflict of interest. KLNG will
3 not undertake to represent any creditor or party-in-interest in connection with these bankruptcy cases.
4 In addition, the fees individually derived from each of the entities listed on Exhibit "1" represented
5 less than one percent of KLNG's annual revenue in the last fiscal year.
6

7 11. In the event that KLNG discovers any additional facts bearing on the matters
8 described herein, I will supplement the information contained in this declaration.

9 12. The various hourly billing rates for KLNG's attorneys and support staff are as follows:

10 Partners and Counsel \$350-\$680

11 Associates \$260-\$475

12 Paraprofessionals \$170-240
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14 13. The hourly rates set forth above are subject to periodic adjustments to reflect
15 economic and other conditions. Other attorneys and legal assistants may from time-to-time perform
16 legal services in connection with the matters herein described.

17 14. In addition, below is a list of rates for reimbursable expenses charged by KLNG:

18 Photocopying: \$0.15/page

19 Faxing: No charge, other than the actual costs for telephone charges

20 Telephone Calls: Actual cost

21 FedEx/USPS: Actual cost
22

23 15. The expenses set forth above may change from time to time.

24 16. KLNG intends to submit for compensation and reimbursement of expenses in
25 accordance with the Ordinary Course Order.

26 17. KLNG has not shared, nor agreed to share, any compensation received in connection
27 with this engagement with any other person, except pursuant to the ordinary agreements applicable to
28 the members and employees of KLNG.

1 I declare under penalty of perjury under the laws of the United States of America that the
2 foregoing is true and correct and that this declaration is being executed at Dallas, Texas, on this 8th
3 day of December, 2006.
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5 Brian R. Forbes
6 Brian R. Forbes
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EXHIBIT "1"

LIST OF KNOWN CONNECTIONS

KLNG represents or has represented the following creditors in these cases in matters wholly unrelated to these bankruptcy cases:

Banc of America Securities LLC
Bank of America
Banc of America Leasing & Capital Group, LLC
Bank of America, N.A.
Banc of America Mortgage
Bank of America Investment Services, Inc.
Banc of America Securities, LLC
Bank of America Corporation
Bank of America Community Development Venture Funds
Bank of America Trust and Savings Association
Bank of America Private Bank
Bank of America Long Term Disability Plan
Bank of America National Trust & Savings

Citibank South Dakota, N.A.
Citicorp
Citibank, N.A.
Citicorp USA, Inc.
Citicorp Mortgage, Inc.
Citicorp Credit Services, Inc.
Citibank, F.S.B.
Citicorp, N.A.
Citibank (West) FSB
Citicorp Credit Services, Inc.
Citibank National Association
CitiFinancial Credit Company
Citicorp U.S.A., Inc.
Citibank, F.S.B.
Citibank Private Bank
Citibank International
Citibank Services, Inc.
Citigroup Global Markets, Inc.
Citibank N.A. Japan
Citigroup, Inc.
Citibank (South Dakota) N.A.
Citibank International PLC

Signature Financial Group, Inc.

1 US Bank
2 US Bank National Association, N.D.
3 US Bank Home Mortgage
4 U.S. Bank National Association
5 Wells Fargo Tactical Factor Management
6 Wells Fargo Alternative Asset Management, LLC
7 Wells Fargo Bank Multi-Strategy Trusts
8 Wells Fargo Multi
9 Wells Fargo Strategy 50 Fund
10 Wells Fargo Bank, National Association
11 Wells Fargo Business Credit, Inc.
12 Wells Fargo Funding, Inc.
13 Wells Fargo Foothill, Inc.
14 Wells Fargo Mortgage, Inc.
15 Well Fargo Multi-Strategy Trusts
16 Wells Fargo Alternative Asset Mgmt. LLC
17 Wells Fargo Multi-Strategy 50 Fund LLC
18 Wells Fargo Multi-Strategy 100 Fund LLC
19 Wells Fargo Multi Strategy 50 Hedge Fund, LLC
20 Wells Fargo Multi-Strategy 100 Hedge Fund, LLC
21 Wells Fargo Multi-Strategy 50 Offshore Hedge Fund, Ltd.
22 Wells Fargo Multi-Strategy 100 Offshore Hedge Fund, Ltd.
23 Wells Fargo Hedge Strategy Palette LLC
24 Wells Fargo Alternative Management Capital Partners VII, LLC
25 Wells Fargo Alternative Asset Management, LLC
26 Wells Capital Management Incorporated
27 Wells Fargo Financial Washington I, Inc.
28 Wells Capital Management, Inc.
Wells Fargo Securities, LLC
Wells Fargo Bank. N.A.
Wells Fargo Funds Management, LLC
Wells Fargo Securities, LLC
Wells Fargo Investments
Wells Fargo Bank Private Client Services